IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL REVISION APPLICATION NO.461 OF 2007

Sri Rajaram Baburao Sawant : Applicant

V/s.

Senior Division Civil Judge, Pune & Ors. : Respondents

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Ms O. Maitea i/b. Paras Kuhad & Associates for the applicant.

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CORAM : S.A.BOBDE, J.

DATE : OCTOBER 11, 2007.

P.C.

1. This is a Civil Revision Application preferred by the applicant against the order of the trial Court rejecting the applicant's application under Order VII Rule 11 of the Code of Civil Procedure. The respondent has claimed right of way against the applicant. The applicant's case is that the suit does not disclose any cause of action on the ground that it is solely based on an earlier compromise decree and the compromise decree does not confer any such right of way. The trial Court has observed that the respondent has not merely claimed any right on the basis of a compromise decree, but has also claimed an easementary right. Upon perusal of the other features of the plaint, the trial Court has observed as follows:-

> "8. It is not a thing of concern whether the cause of action pleaded is true, false or otherwise, which fact needs to be scrutinized and ascertained during the course of trial. What is material at this juncture is as to whether the plaintiff has explained all those facts which constituted the cause of action. Bare perusal of plaint certainly provides answer to this question in affirmative."

Thereupon the trial Court has come to the conclusion that the suit is not barred by any law for the time being in force.

2. The learned counsel for the applicant strongly urged that this order needs to be interfered with by this Court since the terms of the compromise decree do not reveal any right of way in favour of the respondent-plaintiff. Whether that is so or not, it appears that the suit is not based only on the basis of a compromise decree. It cannot be said at this stage that there is no cause of action.

3. In the circumstances, the Revision Application is dismissed.

S.A. BOBDE, J.